IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Jagga Singh Vs. State of Rajasthan & Ors.
S.B. CR. REVISION PETITION NO.398/2006

Against order dated 13.05.2005 passed by Sessions Judge, Hanumangarh in Sessions Case No.15/2005 - State Vs. Sardul Singh & Ors.

DATE OF ORDER :: 1st December, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. S.D. Goswami for petitioner.
Mr. V.R. Mehta, Public Prosecutor.
Mr. D.L. Mothsra for respondent No.2 to 8.

BY THE COURT:

Heard.
Admit.

At the request of both sides, the matter is heard finally and is being disposed of.

Complainant Jagga Singh, the present petitioner, aggrieved by the discharge of accused persons for the offence under Sec. 307, 307/149 IPC and framing charge only under Sec. 147, 148, 323/149, 324/149, 323, 324,

336 IPC, vide order dated 13.05.2005 passed by Sessions Judge, Hanumangarh in Sessions Case No.15/2005 - State Vs. Sardul Singh & Ors., has approached this Court by filing the present criminal revision petition under Sec.397 & 401 Cr.P.C.

The facts relevant for the present revision petition are that on 03.10.2004 at 9:30 PM the complainant presenting himself at the Police Station submitted a written report stating inter-alia that at about 5 PM when he went to his plot at village Norangdeshar, at that time Sardul Singh and others came there. Sardul Singh and Gurdev Singh, who were respectively having gun and pistol in their hands, fired at him. The other persons accompanying them threw bricks and stones on him in order to kill him and on his raising cries, Karnail Singh and others came at the spot but as the stones were being thrown, they all ran from there and rescued themselves in the house where also the stones were pelted.

The police on the basis of report, registered FIR No.520/2004 under Sec. 307, 336, 323, 324, 147, 148, 149

IPC and Sec.27 of the Arms Act, and on completion of investigation filed chargesheet against the accused respondents for offence under Sec. 307, 336, 323, 147, 148, 149 IPC in the Court of Chief Judicial Magistrate, Hanumangarh. The offence under Sec.307 IPC being triable by the Court of Sessions, the matter was committed to the Court of District & Sessions Judge, Hanumangarh, where the learned Sessions Judge has framed the charges against accused persons for the aforesaid offences and discharged them of the offence under Sec. 307, 307/149 IPC taking into consideration that none of the injuries received by the complainant as shown in the Injury Report of Jagga Singh was sufficient in the ordinary course of nature to cause death even when accused Sardul Singh and Gurcharan Singh were said to be having fire arms with them. Hence, this revision petition.

The contention of the learned counsel is that learned trial Court has committed serious illegality while not considering this aspect of the matter that many fire arm injuries were sustained by the complainant, may be that of superficial nature, as found in the injury report of Jagga

Singh, are on vital parts of the body such as chest, abdomen etc, therefore, the learned Sessions Judge committed serious illegality in discharging the accused for the offence under Sec.307 IPC. It has also been submitted that as regards intention part is concerned, that was clearly borne out from the fact that accused respondents were having having fire arms with them and they used the same and injuries were found on chest and other parts of the body of the complainant then to presume that since the injuries were simple in nature, it cannot be said that the material was not sufficient for framing charge under Sec.307, 307/149 of the IPC. It has also been submitted that the statements of witnesses and the first version which finds place in the First Information Report, if read together with the medical report, would go to show that the accused respondents were having intention to kill the complainant. It has further been submitted that Jagga Singh sustained 7 fire arm injuries and some of them are on vital parts and the investigating agency recovered one 12 bore pistol and also from the spot recovered empty cartridges, then in such circumstances, prima facie, it cannot be said that the material brought before the Court was not sufficient to

frame charge under Sec.307, 307/149 IPC against the accused respondents.

On the other hand, learned Public Prosecutor assisted by counsel for the complainant submitted that the learned Sessions Judge has found the injuries superficial in nature not on vital part of the body and further there was no material available to show that the injuries caused were sufficient in the ordinary course of nature to cause death, therefore, correctly discharged the accused from the offence under Sec.307, 307/149 of the IPC.

I have considered the submissions made before me.

At the very outset, it may be stated that the accused persons were having fire arms with them and they used the same in the alleged incident and on account of using fire arms petitioner sustained injuries on lower abdomen and other parts of body, may be that the injuries were of superficial nature but it can be gathered that mensrea was present and the act of the accused

respondents was such so as to draw an inference that they were having intention and knowledge that by the use of fire arms death could be caused then in such circumstances to draw a conclusion that accused respondents were liable to be discharged for the offence under Sec.307, 307/149 IPC cannot be said to be a proper proposition of law.

A perusal of papers on file also indicates that the accused respondents came together at the spot and by using the fire arms in their hands caused injuries on the vital parts of the body of complainant party. Simply because the injuries sustained were simple in nature is not sufficient to draw a conclusion that accused had no intention or knowledge that due to the infliction of injuries on account of using fire arms death could be caused and no charge can be made out under Sec.307, 307/149 of the IPC. Therefore, in my humble opinion, the contention of the learned counsel for the petitioner requires acceptance and the competent Court is required to frame charge against the accused respondents for the offences under Sec.307, 307/149 IPC.

Accordingly, the revision petition succeeds and the impugned order to the extent discharging the accused respondents for the offence under Sec. 307, 307/149 IPC is set aside and it is hereby directed that the trial court shall frame the charge under Sec.307 or in alternate under Sec.307/149 IPC against the accused respondents and thereafter shall proceed in accordance with law.

The revision petition stands disposed of.

(**SATYA PRAKASH PATHAK**) **J**.

/jpa